

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
EUDY TORRES,

Plaintiff

- against -

THE CITY OF NEW YORK,
POLICE OFFICER GLORIA BYRD (shield # 31579),

Defendants.
-----X

Index No.

Purchased 5-27-20

Plaintiff designates New
York County as the place
of trial


The basis of the venue is
where the tort arose

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, NY
May 22 2020



THE LAW OFFICES OF ELLIOT S. KAY
Attorney for Plaintiff
888 Grand Concourse, Suite 1H
Bronx, NY 10451
(212) 939-7251

Defendant's Address:
CORPORATION COUNSEL OF THE
CITY OF NEW YORK
100 Church Street
New York, New York 10007

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Plaintiff

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VERIFIED COMPLAINT

Defendants.
-----X

Plaintiff, by his attorney, **ELLIOT S. KAY**, as and for his Verified Complaint, respectfully
alleges, upon information and belief:

PARTIES

1. At all times hereinafter mentioned, Plaintiff EUDY TORRES was a resident of the State of New York.
2. At all times hereinafter mentioned, Defendant THE CITY OF NEW YORK ("CITY"), was and still is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.
3. At all times hereinafter mentioned, the NEW YORK CITY POLICE DEPARTMENT ("POLICE"), was and is an agency of Defendant CITY.
4. At all times hereinafter mentioned, Defendant, POLICE OFFICER GLORIA BYRD (shield # 31579) ("P.O. BYRD") was and is a police officer employed by Defendants.
5. At all times hereinafter mentioned, Defendant P.O. BYRD was a resident of the State of New York.

6. At all times hereinafter mentioned, Defendant CITY and Defendant P.O. BYRD stood in such a relationship with each other in providing law enforcement services as to make each liable for the acts and omissions of the others.

7. Defendant CITY is vicariously liable for the acts of Defendant P.O. BYRD.

BACKGROUND

8. On May 5, 2018, at approximately 11:45 p.m., in the vicinity of 1469 5th Avenue in New York County, without just cause or provocation, P.O. BYRD approached Plaintiff while Plaintiff was lawfully standing on a sidewalk. Next, P.O. BYRD directed Plaintiff to leave the area despite the fact that Plaintiff was not congregating with a group, loitering or otherwise engaged in any criminal activity. As Plaintiff walked away, P.O. BYRD, apparently unsatisfied, followed Plaintiff and verbally taunted Plaintiff.

9. Shortly thereafter, members of POLICE, including P.O. BYRD, violently handcuffed Plaintiff and intentionally and falsely accused Plaintiff of having committed the crime of Obstructing Governmental Administration in the Second Degree and the violation of Disorderly Conduct.

10. On or about May 6, 2018, a criminal complaint was issued at the directive of Defendants and a criminal action against Plaintiff commenced. Plaintiff was released from custody on or about May 6, 2018.

11. The criminal matter was terminated in favor of Plaintiff on April 17, 2019.

PROCEDURAL POSTURE

12. On May 21, 2019, Plaintiff served a Notice of Claim in writing sworn to on Plaintiff's behalf upon Defendant CITY, by delivering a copy thereof to the officer designated to receive such process personally, which Notice of Claim advised the Defendant of the nature, place, time,

and manner in which the claim arose, and the items of damage and injuries sustained so far as was then determinable.

13. More than thirty days have elapsed since service of said notice, and defendant CITY has failed to pay or adjust this claim.

14. A 50-H hearing has been held.

15. This action has been commenced within one year and ninety days after the cause of action accrued.

16. Plaintiff has duly complied with all conditions precedent to the commencement of this action.

FIRST CAUSE OF ACTION: MALICIOUS PROSECUTION

17. Paragraphs 1-16 are incorporated by reference as though fully set forth herein.

18. In arresting Plaintiff, the Defendants acted with malice.

19. The Defendants lacked probable cause to arrest Plaintiff.

20. The matter was terminated in Plaintiff's favor when all charges were dismissed and sealed on April 17, 2019.

21. As a result of being maliciously prosecuted by the Defendants, Plaintiff sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for Plaintiff's safety.

SECOND CAUSE OF ACTION: §1983 FOR FALSE ARREST AGAINST ALL
DEFENDANTS IN VIOLATION OF PLAINTIFF'S
UNITED STATES CONSTITUTIONAL RIGHTS

22. Paragraphs 1-21 are incorporated by reference as though fully set forth herein.

23. This action also seeks damages against Defendants for committing acts under color of law, and depriving Plaintiff of rights secured by the Constitution and laws of the United States.

Defendants, while acting in their capacities as police officers of the City of New York, State of New York, deprived Plaintiff of his liberty (see paragraphs 8-10 above) without due process of law, thereby depriving Plaintiff of his rights, privileges and immunities as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States. The Court has jurisdiction of this action under 42 U.S.C. § 1983.

24. At all relevant times, Defendants, including P.O. BYRD, acted forcibly in apprehending, arresting and imprisoning Plaintiff.

25. Prior to May 5, 2018, CITY and POLICE developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of citizens, which caused the violation of Plaintiff's rights. It was the policy and/or custom of CITY to inadequately and improperly investigate citizens' complaints of police misconduct and actual acts of misconduct; and acts of misconduct were instead tolerated by CITY.

26. It was the policy and/or custom of CITY and POLICE to encourage and permit police officers to direct individuals to "disperse" and/or "leave the area", without any legal basis to make said requests. It was further the policy and/custom of CITY and POLICE to arrest individuals for Disorderly Conduct for "failing to disperse", despite the fact that POLICE lacked probable cause to make such arrests for Disorderly Conduct.

27. It was the policy and/or custom of CITY to inadequately supervise and train its police officers, managers and employees, including the Defendant officers, thereby failing to adequately discourage further constitutional violations on the part of their agents. Officers were encouraged and often harassed to make as many arrests as possible without concern for the validity of those arrests. The Defendants' agencies did not require appropriate in-service training or re-training of officers and employees who were known to have engaged in misconduct or who

had shown a propensity to encourage rule violations for their own convenience at the expense of others.

28. As a result of being falsely arrested and imprisoned by the Defendants, Plaintiff sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for Plaintiff's safety.

WHEREFORE, Plaintiff demands judgment against the Defendants in each separate cause of action in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter; together with the costs and disbursements of this action.

Dated: May 22, 2020
Bronx, NY



THE LAW OFFICES OF ELLIOT S. KAY
Attorney for Plaintiff
888 Grand Concourse, Suite 1H
Bronx, NY 10451
(212) 939-7251

TO:
JAMES E. JOHNSON
New York City Law Department
100 Church Street
New York, New York 10007

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-----X

I, **ELLIOT S. KAY**, an attorney admitted to practice in the courts of New York State, state that I am the attorney of record for Plaintiff in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not the Plaintiff is because Plaintiff resides outside the county where deponent maintains his office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Bronx, NY
May 27, 2020

ELLIOT S. KAY